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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/973,251	10/08/2001	David N. Sciuk	267/040	6179

7590 06/21/2006  
ASHLEY J. WELLS .ESQ.  
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EXAMINER

ZEENDER, FLORIAN M

ART UNIT PAPER NUMBER

3627

DATE MAILED: 06/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/973,251	<b>Applicant(s)</b> SCIUK, DAVID N.	
	<b>Examiner</b> F. Ryan Zeender	<b>Art Unit</b> 3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 April 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 29-47, 49-82, 84-108, 110-137, 139-158, 160-174 and 176-178 is/are pending in the application.
- 4a) Of the above claim(s) 29-47, 49-82, 84-99, 140-158 and 160-174 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 100-108, 110-137, 139 and 176-178 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

In the reply received April 6, 2006, the applicant requested correction of the scanned application due to formatting errors. However, the scanning of the application by the PTO into eDAN would not affect the format of the scanned document. Each page is scanned exactly as it is received by the applicant. It is the final publishing of the scanned document by contractors that has an affect on the appearance of the tables and formulas in the application. The Publishers are bound by certain size limitations and margins, so this could be why the published document is "difficult to read and understand". Upon allowance of the application, if the applicant determines that the information in the tables and formulas actually cannot be read or that the information is incorrect, then the PTO would suggest filing a Certificate of Correction.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 100-108, 110-137, 139, and 176-178 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In each of claims 100 and 103, it is not clear how "subjective bias from humans is substantially eliminated" when lines 7-8 specifically claim "input means for inputting program code and user information, order information, and provider information". It would appear that if information is inputted, then there would be at least some human subjective bias. Further, in paragraph "(f)" of each of claims 100 and 103, the

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terminology, "confidence in the degree of matching is improved" is not definite language in that the term "confidence" is dependent on human emotion and would vary from one individual to another.

### ***Allowable Subject Matter***

Claims 100 and 103 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2<sup>nd</sup> paragraph set forth in this Office action. **An amendment to place the application in condition for allowance should not broaden the scope of the claims such that further consideration with respect to prior art would be necessary.**

Claims 101-102, 104-108, 110-137, 139, and 176-178 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2<sup>nd</sup> paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims. **An amendment to place the application in condition for allowance should not broaden the scope of the claims such that further consideration with respect to prior art would be necessary.**

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to F. Ryan Zeender whose telephone number is (703) 308-8351. The examiner can normally be reached on Monday-Friday, 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alex Kalinowski can be reached on (571) 272-6771. The receptionist's phone number for the Technology center is (571) 272-3600.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

F. Zeender  
Primary Examiner, A.U. 3627  
June 12, 2006

  
F. RYAN ZEENDER  
PRIMARY EXAMINER